IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

Crl.Rev.Pet.No. 3050 of 2003()

CC.133/1999 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KUNNAMKULAM
CRA.536/2001 of ADDL. SESSIONS COURT (ADHOC), THRISSUR
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REVN. PETITIONER: APPELLANT/2ND ACCUSED.

ASHRAF,S/O.ALI, ANDIYATH THAZHATHETHIL HOUSE, CHIRAMANGAD VILLAGE, DESOM.

BY ADV. SRI.P.VIJAYA BHANU
SMT.P.MAYA
SRI.VIVEK.JOY.K

RESPONDENTS: COMPLAINANT.

STATE OF KERALA REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.K.B.MOHANDAS
SRI.LELLULAL T.G.THUNDATHIL
SRI.K.A.SREEJITH
PUBLIC PROSECUTOR SRI. K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 17/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. No. 3050 of 2003

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Dated: 17th October 2007

ORDER

The revision petitioner who is the 2nd accused in C.C. 133 of 1999 on the file of the J.F.C.M. , Kunnamkulam stands concurrently convicted for an offence punishable under Section 326 I.P.C.

2. The case of the prosecution is that on 26-1-1999 at about 9.45 a.m. all the three accused persons criminally trespassed upon the property of P.W.1 and tried to forcibly draw water from the well by installing pipeline and when P.W.1 questioned, A1 cut him with a chopper on his right hand and A2 cut CW2 the father (since deceased) of P.W.1 on his head with a chopper and thereafter A1 cut P.W.1 with a chopper on his left thigh , A2 cut on his left leg and A3 instigated A1 and A2 in mounting attack on P.W.1 and C.W.2. both of them sustained grievous hurt.

3. P.W.1 the injured is the solitary eye - witness in support of the occurrence. An analysis of his evidence shows that it was in violation of an order of injunction restraining P.W.1 from entering the place of occurrence that he came to be present at the scene of crime. He himself was a violator of law and was present at the scene of

crime where he was restrained from entering by the civil court. It was while on the said place that he alleged that he was assaulted by A1 and A2 using a chopper. The further evidence shows that the prosecution has suppressed the genesis of the occurrence. It is not discernible from the evidence as to who was the aggressor. The cut injuries sustained by P.W.1 were also not on vital parts of the body and which is indicative of a scuffle. Under these circumstances, the revision petitioner could legitimately press into service the principles laid down by the Apex Court in **Lakshmi Sing v. State of Bihar - AIR 1976 SC 2263.** The revision petitioner was thus in the legitimate exercise of his right of self defence which of course has been exceeded. Hence the offence if at all made out is one punishable under Sec. 335 I.P.C. At any rate, the conviction under Section 326 is unsustainable. The revision petitioner is, accordingly, found not guilty of the offence punishable under Sec. 326 I.P.C. and is acquitted of the same . Instead he is convicted under Sec. 335 I.P.C.

The revision petitioner as well as P.W.1, the injured have subsequently filed Crl.M.P.10579 of 2007 to the effect that the offence punishable under Sec. 335 I.P.C. has been compounded and requesting this court to record the composition. The said

composition is recorded and it will have the effect of an acquittal of the revision petitioner of the offence punishable under Sec. 335 I.P.C. in view of Sec. 320 (8) Cr.P.C.

This revision is disposed of as above.

V. RAMKUMAR,
(JUDGE)

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